

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
WESTERN DIVISION**

Tammy Barker, Timothy Robert Barker, and)
Melisa Merryman, on behalf of themselves)
and on behalf of those similarly situated,)
Plaintiffs,) Case No. 08 C 50015
v.)
Judge Reinhard
Local 150, International Union of) Magistrate Judge Mahoney
Operating Engineers, AFL-CIO,) Trial by Jury Demanded
Local 150.)

**PLAINTIFF'S MOTION TO STRIKE AND TO FILE MEMORANDUM IN
SUPPORT OF PLAINTIFFS' RESPONSE TO LOCAL 150'S MOTION TO
DISMISS OR STAY INSTANTER.**

The Plaintiffs hereby move to strike certain factual matters from Defendant Local 150's Memorandum in support of its motion to dismiss or stay Plaintiffs' complaint, as more fully described in the attached Response Memorandum.

In addition, the Plaintiffs move the court for permission to file their response to Defendant Local 150's Motion to Dismiss or Stay instanter and seek permission to file a 20 page memorandum attached hereto as Exhibit 1. In support thereof, Plaintiff states as follows:

Mr. Polales apologizes to the court and counsel for the defendant for the time it has taken to finish the Plaintiffs' response. Mr. Polales states that he underestimated the time necessary to research and write the plaintiff's response after initially reviewing the defendant's motion and Mr. Hanlon's initial draft, and as a result incorrectly believed that the research, organization and writing of the response would be much quicker than it was.

In addition, Mr. Polales states that he has spent in excess of 30 hours on the research and drafting of the response.

In addition, because of the variety of issues and arguments touched on or suggested by the defendant in the motion to dismiss, including judicial notice, estoppel, *Garmon* pre-emption, statute of limitations, pleading requirements, stay, declaratory judgment procedures, as well as subject matter jurisdiction, the plaintiffs respectfully request permission to file a brief with an additional 2 pages. Plaintiffs' counsel believes that the present brief will be helpful to the court in the decision of the motion and that 5 additional pages are reasonable, given the anticipated reply to be filed by the Defendant.

Respectfully submitted:

By: s/Dean J. Polales

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